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## AMLO Proposes New Legislation to Regulate the Oil & Gas Industry

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On March 26, 2021, the President of Mexico, Andrés Manuel López Obrador (“AMLO”), sent a new bill to Congress intended to amend the Federal Hydrocarbons Law (the “Hydrocarbons Bill”). This is AMLO’s latest attempt to upend the Mexican energy sector and to restore the dominance of PEMEX, the national oil company.

Consistent with his recent announcements, AMLO claims that the privatization of the Mexican energy market has caused grave harm to Mexico’s national energy security. The Hydrocarbon Bill’s stated purpose is to grant a greater role to state owned entities in midstream and downstream activities rather than “leave those activities in the hands of the private sector in light of the imminent risks to national security.” The Hydrocarbons Bill indicates that the world is entering an energy transition that will affect Mexico’s ability to guarantee its energy security and financial stability; and that a shortage of hydrocarbons supply poses serious risks to the country.

The Hydrocarbons Bill uses these reasons to justify granting unfettered authority to the Mexican government to suspend previously-granted permits for the import, export, storage, processing and commercialization of hydrocarbons, petroleum resources and petrochemicals. In practical terms, the Hydrocarbons Bill, if passed, will set forth the following new rules with respect to such permits:

- Permit holders for distribution and commercialization will be required to comply with a minimum fuel storage policy;
- If energy regulators fail to respond to a permit application within 90 days, the permit will be considered to have been denied;
- The Energy Ministry (“SENER”) and the Comisión Reguladora de Energía (“CRE”) will have enhanced authority to suspend (temporarily or permanently) operating permits. Permits can be suspended based for vague and broad reasons such as “national and energy security” or the “security of the national economy.”



- Once a permit is suspended, SENER and CRE can occupy the facility; only state-owned entities can continue operating the occupied facilities; and
- Failure to comply with hydrocarbons' quality, quantity and measurement requirements, as well as modifications to technical equipment shall be deemed as new immediate grounds for permit revocation.

This Hydrocarbons Bill is the latest example of AMLO's nationalistic ambitions to undo Mexico's 2013 privatization of the energy market. If the Hydrocarbons Bill is passed, permit-holders will face considerable uncertainty due to the Mexican authorities' new power to suspend their permits based on undefined and politically motivated grounds.

Similar to the recent reform to the power sector,<sup>1</sup> the Hydrocarbons Bill is expected to move swiftly in the House of Representatives and the Senate, where AMLO's political party, "Morena", holds the majority. The proposed legislation comes in advance of Mexico's midterm federal elections in June 2021, which will test AMLO and his party's political clout.

Due to its impact on existing investments in Mexico, the Hydrocarbons Bill could violate rights afforded by Mexico to foreign investors under international investment treaties and free trade agreements. Mexico has signed investment treaties and trade agreements with approximately 45 countries. These treaties and agreements protect foreign investors from, among other things, discriminatory, arbitrary, and unfair and inequitable treatment by the Mexican Government, as well as from direct and indirect expropriation of their investments. Like other countries that amended their energy regulatory framework, Mexico could see a number of investment treaty arbitrations launched by foreign investors. As part of a comprehensive defense strategy, investors considering filing local actions, like *amparos*, should assess, in parallel, their remedies under these treaties.

King & Spalding's international arbitration team has significant experience in energy disputes across Latin America and worldwide. Ranked the no. 1 international arbitration practice in the world, King & Spalding has represented a wide array of clients in disputes on the entire energy sector.

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<sup>1</sup> See <https://www.kslaw.com/news-and-insights/reform-to-mexican-electricity-law-to-come-into-effect>